enforce the same rule against the city. There are undoubtedly some things that a city may not do within its streets. *Lutterloh* v. *Mayor, etc. of Cedar Keys*, 15 Fla. 306; *Morrison* v. *Hinkson*, 87 Ill. 587; *Dubuque* v. *Maloney*, 9 Iowa 450. When the city is improving roads or building bridges, courts go very far to find its action privileged as an exercise of governmental function. *Callendar* v. *Marsh*, 1 Pick. (Mass.) 418; *Selden* v. *City of Jacksonville*, 28 Fla. 558, 10 So. 457; *Sauer* v. *New York*, 180 N. Y. 27, 72 N. E. 579. But arguments of that sort hardly apply to an encroachment by a public bath.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — ACCRETIONS TO SERVIENT TENEMENT. — The owner of a large tract of land lying between bay and ocean divided it into building lots. He agreed with the buyers of lots that a certain strip running through the center of the tract from bay to ocean should be kept forever open. Extensive accretions formed at the ocean extremity of this open area. *Held*, that the accretions were subject to the restrictions binding the original strip. *Bridgewater* v. *Ocean City Ass'n*, 96 Atl. 905 (N. J.).

It is a familiar rule of construction of grants that the designation of navigable water as a boundary imports the shifting high-water line thereof. *Mulry* v. *Norton*, 100 N. Y. 424, 3 N. E. 581. This rule has been likewise applied to a street easement acquired by condemnation proceedings. See 22 HARV. L. REV. 610. The correctness of its application in the principal case can hardly be questioned. The same result, however, might have been reached by regarding the accretions as assimilated by or drowned in the original tract, and therefore subject to its burdens. This conception is amply supported by precedent. For example, the adverse occupancy of shore land for the statutory period carries with it title to accretions, though the latter may have but recently formed. See *Campbell* v. *The Laclede Gas Light Co.*, 84 Mo. 352, 372. Similarly if the tract is mortgaged, the accretions are subject to the mortgage lien. *Cruikshanks* v. *Wilmer*, 93 Ky. 19, 18 S. W. 1018. The same is likewise true in the case of dower. *Lombard* v. *Kinzie*, 73 Ill. 446. The rule is also followed where the land is subject to a lease. *Cobb* v. *Lavalle*, 89 Ill. 331.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO THE USE OF PROPERTY — EMINENT DOMAIN — COMPENSATION TO OWNER OF BENEFITED LAND WHEN RESTRICTED LAND IS CONDEMNED. — The plaintiff owned lots which were within a tract of restricted building lots, the deeds to which provided that no structure for business purposes should be erected on any of these lots. The defendant railway company acquired lots equitably servient to those of the plaintiff and built its tracks thereon. The plaintiff seeks compensation. *Held*, that the plaintiff may recover. *Flynn* v. *New York, Westchester & Boston Ry. Co.*, 112 N. E. 913 (N. Y.).

In two similar cases *held*, that the plaintiff may not recover. *Ward* v. *Cleveland Ry. Co.*, 92 Ohio St. 471, 112 N. E. 507; *Doan* v. *Cleveland Short Line Ry. Co.*, 92 Ohio St. 461, 112 N. E. 505.

The question whether an equitable servitude is a contract right or a right *in rem* has been a matter chiefly of theoretical dispute. See 21 HARV. L. REV. 139. In the principal cases the question has become of practical importance. By adopting different theories the courts have reached different results. It seems doubtful, however, whether even here different conclusions are necessary. The two Ohio cases hold, going on the contract theory, that a restrictive covenant creates no rights effective as against the powers of eminent domain. The basis of such decision is public policy: otherwise property owners could by contracting among themselves defeat the rule that depreciation in value of neighboring property incidental to a public use does not constitute a "taking" so as to require compensation. See *United States* v. *Certain Lands*,

etc., 112 Fed. 622, 629. Accepting such basis as sound, it appears that on the property theory there may be the same result. For the creation of such property right rests on contract. Now a possible construction of the contract, and one favored by the rule that a contract must be construed, if possible, to be within public policy, is that the restriction was to cover only private undertakings. *Cf.* 29 HARV. L. REV. 552. If such interpretation is rejected, the full operation of the contract would, by our premise, conflict with public policy. This may mean that the contract is void. But the contract may be good, and policy still prevent the creation of an equitable property right from it. *Norcross* v. *James*, 140 Mass. 188, 2 N. E. 946. In either case, there is no property right to award compensation for.

TAXATION — WHERE PROPERTY MAY BE TAXED — INHERITANCE TAX ON NON-RESIDENT PARTNER'S INTEREST IN LOCAL PARTNERSHIP REALTY. — The testator, a resident of New York, was a member of a partnership, which had a branch and owned realty in Pennsylvania. The partnership agreement provided that upon the death of one partner the other should carry on the business, paying to the estate of the deceased partner the value of his interest. On the death of the testator, Pennsylvania attempts to collect an inheritance tax on the testator's interest in the partnership property. The personal representatives of the testator were non-residents. *Held*, that the tax cannot be collected. *In re Arbuckle's Estate*, 97 Atl. 186 (Pa.).

Real property is taxable in the jurisdiction in which it is situated. *People* v. *Howell*, 106 App. Div. 140, 94 N. Y. Supp. 488. On the other hand, debts of whatever form are taxable at the domicile of the creditor. *Meyer* v. *Pleasant*, 41 La. Ann. 645, 6 So. 258; *Kirtland* v. *Hotchkiss*, 100 U. S. 491. Where a testator directs in his will that his realty be sold, such direction works an equitable conversion of the realty which is then taxable as personalty. *In re Smyth*, [1898] 1 Ch. 89; *In re Coleman's Estate*, 159 Pa. St. 231, 28 Atl. 137. *Contra*, *In re Swift's Estate*, 137 N. Y. 77, 32 N. E. 1096; *Connell* v. *Crosby*, 210 Ill. 380, 71 N. E. 350. The special agreement in the principal case would obviously have the same result. The doctrine of equitable conversion is not however essential to the decision of the case. The better view is that individual partners have no right to realty owned by the partnership, but only a right to its proceeds, *i. e.*, a chose in action. *Kruschke* v. *Stefan*, 83 Wis. 373, 53 N. W. 679. But many jurisdictions allow a partition, if no debts are outstanding. *Molineaux* v. *Raynolds*, 54 N. J. Eq. 559, 35 Atl. 536. The special agreement in the principal case, however, would nullify the right, if any, to partition, which might otherwise have passed to the representatives of the testator. So on any basis they owned a chose in action, taxable only at their domicile.

TELEGRAPH AND TELEPHONE COMPANIES — DAMAGES FOR ERROR, DELAY, OR NON-DELIVERY — MEASURE OF DAMAGES WHERE TELEGRAM FORMED A COMPLETED CONTRACT. — The plaintiff sent a telegram by the defendant company accepting an offer for the sale of goods in reply to a telegram from the offeror. The defendant negligently failed to deliver the telegram, in consequence of which the offeror failed to fulfill his contract, and the plaintiff was forced to buy goods at an advanced rate. A statute provided that telegraph companies shall be liable for special damages caused by failure to deliver dispatches. 1909 REV. STAT. MO., § 3334. *Held*, that the plaintiff can recover the difference between the contract price and the market price. *Tippin* v. *Western Union Telegraph Co.*, 185 S. W. 539 (Mo.).

The delivery of the telegram to the defendant company completed the contract with the offeror. *Lungstrass* v. *German Ins. Co.*, 48 Mo. 201. Its negligence prevented the offeror from carrying out such contract. The injury to the plaintiff thus consists solely in having a reasonable expectation of performance